APPENDIX A

IN THE

SUPREME COURT OF MISSOURI
EN BANC

June 15, 1981

WILLIE WILLIAMS, a/k/a WILLIE J. WILLIAMS, *Petitioner,* vs. DONALD W. WYRICK, Warden, Missouri State Penitentiary, *Respondent.*	No. 62879

ORDER AND WRIT OF HABEAS CORPUS

The State of Missouri, to Donald W. Wyrick, Warden, Missouri State Penitentiary, or his successor in office.

GREETINGS:

The petition of Willie J. Williams for writ of habeas corpus being filed before the Supreme Court of Missouri, en banc, and the response to our order to show cause thereof having been read and considered, and it appearing that the undisputed facts stated in the petition and the return clearly demonstrate that said Willie J. Williams' conviction for armed criminal action, § 559.225, RSMo Supp. 1976, for which he is presently confined is void, and no sufficient cause for the continued detention of said Willie J. Williams appearing, it is hereby ordered that a writ of habeas corpus is ordered to issue and that the judgment of conviction en-

tered against said Willie J. Williams for armed criminal action is vacated and for naught held, and that said Willie J. Williams, be by the said Donald W. Wyrick, Warden of the Missouri State Penitentiary, or his successor in office, forthwith discharged from imprisonment and detention, for the cause aforesaid. *Sours* v. *State*, 603 S.W.2d 592 (Mo. banc 1980).

We further find that the applicant Willie Williams and Willie J. Williams in Missouri Court of Appeals, Eastern District, Case No. 41984 and Willie J. Williams in Circuit Court of the City of St. Louis, Case No. 78-563, are one and the same person.

It is further ordered that pursuant to the writ of habeas corpus granted herein, the judgment of conviction for armed criminal action, § 559.225, RSMo Supp. 1976, entered against Willie J. Williams, is hereby vacated, set aside, and held for naught and a copy hereof is transmitted to the Missouri Court of Appeals, Eastern District, with directions to rule the pending motion for rehearing consistent with this writ and to issue its mandate to the Circuit Court of the City of St. Louis with directions to vacate said judgment of sentence on the official records of the Circuit Court of the City of St. Louis in the case of *State* v. *Willie J. Williams*, Circuit Court No. 78-563.

Day - to- Day

JOHN E. BARDGETT, Chief Justice

All concur, except Rendlen, J.,
who concurs in result.

STATE OF MISSOURI—SCT.:

I, THOMAS F. SIMON, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the order of said court, entered on the 15th day of June 1981, as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court. Done at office in the City of Jefferson, State aforesaid, this 15th day of June, 1981.

Thomas Simon, Clerk.

Anne Berhorst, D.C.

APPENDIX B

IN THE

SUPREME COURT OF MISSOURI

STATE OF MISSOURI

STATE ex rel. WILLIE WILLIAMS, Reg. No. 37205 *Petitioner,* vs. DONALD W. WYRICK, Warden, *Respondent.*	**No. 62879**

PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF HABEAS CORPUS

Comes now Willie Williams, petitioner herein, pro se, and would respectfully move this Honorable Court to issue a Writ of Mandamus Ordering the Honorable Judge James T. Riley, 19th Judicial Circuit, to issue a Writ of Habeas Corpus compeling the respondent in the above-entitled cause to release petitioner from his present unlawful restrain of his liberty by respondent or in the alternative this Honorable Court issue the said Writ of Habeas Corpus and for this cause of action would respectfully submit the following, to-wit:

1. This Honorable Court has jurisdiction pursuant to RSMo 1978 Chapters 529 and 532 and Article V, Section 4 of the Constitution of Missouri.

2. Petitioner respectfully submits that no application for the relief sought has been made to or refused by any court, officer or officers, superior to this Honorable Court.

3. Petitioner is presently being confined unlawfully

at the Missouri State Penitentiary at Jefferson City, Missouri.

4. Respondent is the Warden of the Missouri State Penitentiary and is legal custodian over the petitioner.

5. On February 19, 1981, petitioner, petitioned the Honorable Judge James T. Riley, 19th Judicial Circuit, Missouri, Circuit Court of Cole County, for the issuance of a Writ of Habeas Corpus. Petitioner alleged that the present sentence he is now serving is illegal and unconstitutional for the reason that this Honorable Court has held that convicting a defendant of armed criminal action and the underlying felony constitutes a violation of the prohibition against double jeopardy. *Sours* v. *State,* 593 S.W.2d 208 (Mo. banc, Jan. 1980) (Sours I); by authority of *Whalen* v. *United States,* 445 U.S. ____, 100 S.Ct. 1432 (1980), the United States Supreme Court ordered *Sours I* vacated and reconsidered. *Missouri* v. *Sours,* 27 Crim.L. Rptr. 4071, No. 79-1565 (S.Ct., filed May 27, 1980). Upon reconsideration, the Missouri Supreme Court re-affirmed its findings that conviction of armed criminal action and the underlying felony constitutes a violation of the prohibition against double jeopardy. *Sours* v. *State,* 603 S.W.2d 592 (Mo. banc, Aug. 1980) (Sours II).

6. Petitioner submits to this Honorable Court that he was sentenced by the Circuit Court for the City of St. Louis to terms of imprisonment for the offenses of robbery and armed criminal action arising out of the same transaction; the robbery sentence that was imposed by the circuit court has been served effective February 25, 1981, and petitioner is presently serving the armed criminal action sentence which was imposed by the St. Louis Circuit Court. Thus, by reason of this Court's mandate in *Sours I* and *II,* petitioner is presently serving a sentence which is illegal and void; petitioner's continued confinement is violative of his rights as guaranteed by Article I, Sections

2 and 10 of the Missouri Constitution and the 5th and 14th Amendments to the United States Constitution.

7. On February 26, 1981, the Honorable Judge James T. Riley, 19th Judicial Circuit, Missouri, Circuit Court of Cole County, denied petitioner's petition for Writ of Habeas Corpus holding that petitioner's "proper and more adequate remedy is by proceeding under the provisions of Supreme Court Rule 27.26 in the Circuit Court where he was convicted and sentenced." (See attached sheet)

8. Petitioner submits to this Honorable Court that in a habeas corpus proceeding identical to the instant proceeding this Honorable Court Ordered a Writ of Habeas Corpus to issue for the release of a petitioner who was similarly situated as the petitioner in the instant proceeding. See *Lawrence Ray Burrow* v. *Carl White*, (Mo. banc, May 1, 1980) (Cause No. 61967, filed May 1, 1980). This authority was submitted to the Honorable Judge James T. Riley via Petitioner's Exhibit "A". Thus, Judge Riley had this authority before the court when he denied petitioner's petition.

WHEREFORE, petitioner prays this Honorable Court issue a Writ of Mandamus compeling the Honorable Judge James T. Riley to issue a Writ of Habeas Corpus forthwith for the IMMEDIATE release of petitioner from his unlawful restrain of his liberty, or in the alterative, this Honorable Court issue a Writ of Habeas Corpus for the IMMEDIATE release of petitioner and grant petitioner all other relief this Honorable Court deems just and proper within the premise. IT IS SO PRAYED.

Respectfully submitted,

Willie Williams, pro se
Reg. No. 37205
P.O. Box 900
Jefferson City, Mo. 65102

STATE OF MISSOURI } SS
COUNTY OF COLE }

VERIFICATION AND FORMA PAUPERIS AFFIDAVIT

I, Willie Williams, after first being duly sworn, depose, and swears that he has read the above and foregoing petition; it is true to his best knowledge and belief; that he is a poor person within the meaning of the law and cannot pay the cost of these proceedings; that he has a just cause of action; that he is entitled to the relief sought.

Willie Williams
AFFIANT

Subscribed And Sworn To Before Me This Mar. 2, 1981

Oscar D. Dunbar
NOTARY PUBLIC

My Commission Expires: August 1, 1984

IN THE

SUPREME COURT OF MISSOURI

STATE OF MISSOURI

STATE ex rel. WILLIE WILLIAMS, Reg. No. 37205 *Petitioner,* vs. DONALD WYRICK, Warden, *Respondent.*	No._____

SUGGESTIONS IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND/OR HABEAS CORPUS

Comes now Willie Williams, petitioner herein, pro se, and would respectfully move this Honorable Court to take judicial notice of the following in support of petitioner's motion for Writ of Mandamus and/or Writ of Habeas Corpus, to-wit:

1. On March 2, 1981, petitioner filed a motion for a Writ of Mandamus and/or a Writ of Habeas Corpus in this Honorable Court.

2. Petitioner alleged that he is being unlawfully confined in the Missouri State Penitentiary as a result of serving a conviction for armed criminal action which this Honorable Court has held to be void.

3. Petitioner would respectfully move that this Honorable Court take judicial notice that on February 24, 1981

the Missouri Court of Appeals, Eastern District, reversed petitioner's conviction for armed criminal action. (See Opinion Attached).

Respectfully submitted,

Willie Williams, pro se
Box 900
Jefferson City, Mo. 65102

Subscribed And Sworn To Before Me This Mar. 03, 1981

My Commission Expires: August 1, 1984

Robert A. Foreman
NOTARY PUBLIC

APPENDIX C

IN THE

SUPREME COURT OF MISSOURI

WILLIE WILLIAMS, *Petitioner,* v. DONALD W. WYRICK, Warden, Missouri State Penitentiary, *Respondent.*	**No. 62879**

RESPONSE TO ORDER TO SHOW CAUSE WHY A WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Comes now respondent, Donald Wyrick, Warden, Missouri State Penitentiary, by and through John Ashcroft, Attorney General, and Steven W. Garrett, Assistant Attorney General, and, in response to this court's order of April 6, 1981, directing respondent to show cause why a writ of habeas corpus should not issue, makes the following statement:

Statement As To Custody

Petitioner, Willie Williams, is presently being detained in the Missouri State Penitentiary for Men at Jefferson City, Missouri, pursuant to a valid judgment and sentence entered in the Circuit Court of the City of St. Louis, Missouri, where petitioner was convicted of robbery first degree and armed criminal action. On February 25, 1981, petitioner completed service of his robbery first degree sentence and commenced service of his seven year armed criminal action sentence.

Argument As To Why Relief Should Not Be Granted

Respondent submits that, in view of recent developments in the law concerning the application of the Double Jeopardy Clause of the Fifth Amendment, petitioner should be denied habeas corpus relief. Although respondent recognizes that the most recent pronouncement of this court concerning the Fifth Amendment to the United States Constitution, to-wit: *Sours* v. *State*, 603 S.W.2d 592 (Mo. banc 1980), would require that petitioner's armed criminal action conviction be vacated, the recent United States Supreme Court decision of *Albernaz* v. *United States*, 49 L.W. 4237 (March 9, 1981), relying on *Whalen* v. *United States*, 445 U.S. 684, 100 S.Ct. 1432, 63 L.Ed.2d 715 (1980), held that:

> [T]he question of what punishments are constitutionally permissible is not different from the question of what punishment the legislative branch intended to be imposed. Where Congress intended, as it did here, to impose multiple punishment, imposition of such sentences does not violate the constitution.

Albernaz, supra, 49 L.W. 4240. [Footnote omitted.] Consequently, in view of the fact that this court, in *Sours, supra*, held that the legislature unquestionably intended that punishment be imposed for both armed criminal action and its predicate felony, petitioner's armed criminal action sentence violates no federal constitutional right.

Subsequently to the Supreme Court's rendering its opinion in *Albernaz, supra*, several orders of the Court were issued in cases wherein the double jeopardy issue had been raised. On March 23, 1981, the Court vacated judgments and remanded two cases back to the Supreme Court of Delaware for further consideration in light of *Albernaz v. United States, supra*. See 28 Cr.L.Rep. 4248. Previously,

the Delaware Supreme Court had rendered an opinion similar to that rendered by this Court in *Sours* v. *State, supra.* The Delaware Supreme Court had held that, although the legislative intent to impose two punishments was clear, it violated the Fifth Amendment to the United States Constitution to impose punishments for both Delaware's equivalent to Missouri's armed criminal action statute and its predicate felony. That same day, the Supreme Court vacated judgments and remanded five cases back to the Missouri Court of Appeals, Eastern District, ordering that each case be further considered in light of *Albernaz, supra.* See *Missouri* v. *Counselman,* 28 Cr.L.Rep. 4248.

In another action taken by the United States Supreme Court on March 23, 1981, the direct appeal taken by the defendant in *Whack* v. *Maryland,* was dismissed for want of jurisdiction. Treating the papers filed as a petition for a writ of certiorari, the Court denied said petition. See 28 Cr.L.Rep. 4248. The Court's disposition of *Whack, supra,* is instructive because the defendant therein had appealed from a decision of the Maryland Appellate Court which held that it is constitutionally permissible to convict and sentence for both Maryland's equivalent to Missouri's armed criminal action statute and its predicate felony.

In an action taken on March 30, 1981, the United States Supreme Court vacated the judgment in *Missouri* v. *Brown* (joined with four other cases) and remanded the cases back to the Missouri Court of Appeals, Western District, for further consideration in light of *Albernaz, supra.* See 29 Cr.L.Rep. 4001.

Respondent submits that the only logical inference that can be drawn from the recent United States Supreme Court orders, combined with the clear and unequivocal logic and intent of *Albernaz* v. *United States, supra,* is

that the United States Supreme Court believes that the result reached by this court in *Sours* v. *State, supra,* should be reversed. Consequently, petitioner has no federal constitutional right that is being violated due to his confinement in connection with his armed criminal acton conviction.

WHEREFORE, for the foregoing reasons, respondent requests this court to dismiss the petition without further proceedings. Should this court issue a preliminary writ, respondent requests that this court docket this case for its May, 1981 session.

Respectfully submitted,

JOHN ASHCROFT
Attorney General

STEVEN W. GARRETT
Assistant Attorney General

Supreme Court Building
P.O. Box 899
Jefferson City, Missouri 65102
(314) 751-3321

Attorneys for Respondent

CERTIFICATE OF SERVICE: I hereby certify that a true and correct copy of the foregoing document was mailed, postage prepaid, this 10th day of April, 1981, to:

Willie Williams
Reg. No. 37205
P.O. Box 900
Jefferson City, MO 65102

STEVEN W. GARRETT

APPENDIX D

IN THE

SUPREME COURT OF MISSOURI

WILLIE WILLIAMS, *Petitioner,* v. DONALD W. WYRICK, Warden, Missouri State Penitentiary, *Respondent.*	No. 62879

RETURN

Comes now Donald W. Wyrick, Warden, Missouri State Penitentiary by and through Attorney General John Ashcroft, and his Assistant, Steven W. Garrett, and in return to this Court's writ of habeas corpus states as follows:

1. That respondent, in performance of his statutory duties and responsibilities, has custody of the petitioner;

2. That respondent has custody of the petitioner pursuant to a valid sentence and judgment entered against petitioner;

3. That petitioner is presently being detained in the Missouri State Penitentiary, Jefferson City, Missouri;

4. That production of the petitioner before this Court to be dealt with according to law was waived by this Court's order;

5. That petitioner was charged with and convicted of robbery first degree and armed criminal action whereafter, on August 17, 1979, a valid sentence and judgment was entered against petitioner;

6. That petitioner was sentenced to five years imprisonment for robbery first degree and seven years imprisonment for armed criminal action, the latter sentence to run consecutive to the former;

7. That on February 25, 1981, petitioner completed service of his robbery first degree sentence and commenced service of his seven year armed criminal action sentence;

8. That respondent denies that petitioner is being illegally confined in violation of his Fifth Amendment right not to be placed twice in jeopardy;

9. That, although respondent recognizes that the most recent pronouncement of this Court concerning the Fifth Amendment to the United States Constitution, to wit: *Sours* v. *State*, 603 S.W.2d 592 (Mo. banc 1980), would require that petitioner's armed criminal action conviction be vacated, the recent United Supreme Court decision of *Albernaz* v. *United States*, 49 L.W. 4237 (March 9, 1981), relying on *Whalen* v. *United States*, 445 U.S. 684, 100 S.Ct. 1432, 63 L.Ed.2d 715 (1980), clearly indicates that *Sours*, *supra*, incorrectly elucidates the law on double jeopardy;

10. That this court's previous holding that the legislative intent to punish in regard to armed criminal action is unmistakably clear, combined with the holding of *Albernaz*, *supra*, wherein the United States Supreme Court stated that the question of what punishments are constitutionally permissible is not different from the question of what punishment the legislature intended to be imposed, renders petitioner's claim insubstantial.

WHEREFORE, respondent respectfully request this court to quash the writ of habeas corpus heretofore granted and to remand petitioner to the respondent's custody.

Respectfully submitted,

DONALD W. WYRICK, Warden,
Missouri State Penitentiary

Subscribed and sworn to me this 26 day of June 1981.

Mary V. Moody
NOTARY PUBLIC, in and for the
County of Cole, State of Missouri

My commission expires: May 27, 1982

CERTIFICATE OF SERVICE: I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 26th day of May, 1981, to:

Ms. Leslie Edwards
Assistant Public Defender
1320 Market Street
St. Louis, Missouri 63103

Willie Williams
Reg. No. 37205
P.O. Box 900
Jefferson City, MO 65102

STEVEN W. GARRETT

APPENDIX E

Section 560.120, RSMo 1969, reads as follows:

560.120. Robbery in first degree.—Every person who shall be convicted of feloniously taking the property of another from his person, or in his presence, and against his will, by violence to his person, or by putting him in fear of some immediate injury to his person; or who shall be convicted of feloniously taking the property of another from the person of his wife, servant, clerk or agent, in charge thereof, and against the will of such wife, servant, clerk or agent by violence to the person of such wife, servant, clerk or agent, or by putting him or her in fear of some immediate injury to his or her person, shall be adjudged guilty of robbery in the first degree.

Section 560.135, RSMo 1975 Supp., reads as follows:

560.135. Armed robbery, punishment for.—Every person convicted of robbery in the first degree by means of a dangerous and deadly weapon and every person convicted of robbery in the first degree by any other means shall be punished by imprisonment by the division of corrections for not less than five years; every person convicted of robbery in the second degree shall be punished by imprisonment by the division of corrections not exceeding five nor less than three years; every person convicted of robbery in the third degree shall be punished by imprisonment by the division of corrections not exceeding five years.

Section 559.225, RSMo 1976 Supp., reads as follows:

559.225. Armed criminal action—penalty—exceptions. —1. Except as provided in subsection 4 of this section, any person who commits any felony under the laws of this state by, with, or through the use, assistance, or aid of a dangerous or deadly weapon is also guilty of the crime of

armed criminal action and, upon conviction, shall be punished by imprisonment by the division of corrections for a term of not less than three years. The punishment imposed pursuant to this subsection shall be in addition to any punishment provided by law for the crime committed by, with, or through the use, assistance, or aid of a dangerous or deadly weapon. No person convicted under this subsection shall be eligible for parole, probation, conditional release or suspended imposition or execution of sentence for a period of three calendar years.

2. Any person convicted of a second offense of armed criminal action shall be punished by imprisonment by the division of corrections for a term of not less than five years. The punishment imposed pursuant to this subsection shall be in addition to any punishment provided by law for the crime committee [sic] by, with, or through the use, assistance, or aid of a dangerous or deadly weapon. No person convicted under this subsection shall be eligible for parole, probation, conditional release or suspended imposition or execution of sentence for a period of five calendar years.

3. Any person convicted of a third or subsequent offense of armed criminal action shall be punished by imprisonment by the division of corrections for a term of not less than ten years. The punishment imposed pursuant to this subsection shall be in addition to any punishment provided by law for the crime committed by, with, or through the use, assistance, or aid of a dangerous or deadly weapon. No person convicted under this subsection shall be eligible for parole, probation, conditional release or suspended imposition or execution of sentence for a period of ten calendar years.

4. The provisions of this section shall not apply to the felonies defined in sections 559.005, 564.590, 564.610, 564.620, 564.630, and 564.640, RSMo.